

B 4470

**L.N. 384 of 2015**

**INCOME TAX ACT  
(CAP. 123)**

**INCOME TAX MANAGEMENT ACT  
(CAP. 372)**

**Cooperation with Other Jurisdictions on Tax Matters  
(Amendment) Regulations, 2015**

IN exercise of the powers conferred by articles 76 and 96 of the Income Tax Act and by article 10A of the Income Tax Management Act, the Minister for Finance has made the following regulations:-

Citation.

S.L.123.127

Amends  
regulation 2 of  
the principal  
regulations.

Substitutes  
regulation 3 of  
the principal  
regulations.

**1.** The title of these regulations is the Cooperation with Other Jurisdictions on Tax Matters (Amendment) Regulations, 2015 and these regulations shall be read and construed as one with the Cooperation with Other Jurisdictions on Tax Matters Regulations, hereinafter referred to as "the principal regulations".

**2.** Regulation 2 of the principal regulations shall be amended as follows:

(a) in the definition "EU Administrative Cooperation Directive", immediately after the words "and repealing Directive 77/799/EEC" there shall be added the words "as amended by EU Council Directive 2014/107/EU"; and

(b) immediately after the definition "FATCA Regulations" there shall be added the following new definition:

" "group request" means a request for information on a group of taxpayers, without naming such persons individually: provided that such request does not constitute a fishing expedition, that is to say the request is not in the form of a speculative request that has no apparent nexus to an open inquiry or investigation;".

**3.** Regulation 3 of the principal regulations shall be substituted by the following:

"3. These regulations shall apply in order to ensure the effective cooperation with other jurisdictions on tax matters where arrangements that enable such cooperation are in place and shall be interpreted accordingly. Such cooperation shall

include the exchange of information relating to a group request.".

**4.** Regulation 11 of the principal regulations shall be amended as follows:

Amends regulation 11 of the principal regulations.

(a) sub-regulation (1) thereof shall be renumbered as sub-regulation (1)(a);

(b) in sub-regulation (1)(a) thereof, as renumbered, for the words "regulations 11 to 23" there shall be substituted the words "regulations 11 to 22";

(c) immediately after sub-regulation (1)(a) thereof, as renumbered, there shall be added the following new paragraph:

"(b) For the purposes of the EU Administrative Cooperation Directive, the competent authority in Malta shall waive all claims for the reimbursement of expenses incurred in applying EU Council Directive 2014/107/EU except, where appropriate, in respect of fees paid to experts.";

(d) in sub-regulation (3) thereof for the words "For the purposes of the EU Administrative Cooperation Directive, information shall, as far as possible, be provided by electronic means using the CCN network." there shall be substituted the words "For the purposes of the EU Administrative Cooperation Directive, information shall, as far as possible, be provided by electronic means using the CCN network. The Commissioner is responsible for the development of systems that are necessary to enable such information to be exchanged using the CCN network and for ensuring the security of such systems."; and

(e) immediately after sub-regulation (4) thereof there shall be added the following new sub-regulation:

"(5) The competent authority in Malta shall send feedback on the automatic exchange of information made pursuant to regulation 13 to the other EU Member States concerned once a year in accordance with practical arrangements agreed upon bilaterally with such EU Member States. Such practical arrangements may take any form that is provided for in the definition of the term "arrangement" in regulation 2.".

B 4472

Amends  
regulation 13 of  
the principal  
regulations.

**5.** Regulation 13 of the principal regulations shall be amended as follows:

(a) sub-regulation (2) thereof shall be substituted by the following:

"(2) The competent authority in Malta shall, by automatic exchange, communicate to the competent authority of any other EU Member State, the following information regarding taxable periods as from 1 January 2016 concerning a Reportable Account of residents in that other Member State:

(a) the name, address, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence rules consistent with the Annexes, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;

(b) the account number (or functional equivalent in the absence of an account number);

(c) the name and identifying number (if any) of the Reporting Financial Institution;

(d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;

(e) in the case of any Custodial Account:

(i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting

period; and

(ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

(f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

(g) in the case of any account not described in paragraph (e) or paragraph (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period:

Provided that for the purposes of exchange of information under this sub-regulation, unless otherwise foreseen in this sub-regulation or in the Annexes to the these regulations, the amount and characterisation of payments made with respect to a Reportable Account shall be determined in accordance with Maltese legislation.";

(b) sub-regulation (3) thereof shall be substituted by the following:

"(3) The communication of information in sub-regulations (1) and (2) shall take place as follows:

(a) for the categories laid down in sub-regulation (1): at least once a year, within six months following the end of the year immediately preceding the year of assessment during which the information became available;

(b) for the information laid down in sub-

B 4474

regulation (2): annually, within nine months following the end of the year of assessment during which the information became available.";

(c) sub-regulation (4) thereof shall be substituted by the following:

"(4) For the purposes of this regulation:

"automatic exchange of information" means the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals.

In the context of this regulation, available information refers to information in the tax files of Malta, which is retrievable in accordance with the procedures for gathering and processing information in Malta."; and

(d) immediately after sub-regulation (4) thereof there shall be added the following new sub-regulation:

"(5) The coming into effect of the above provisions shall be as follows:

(a) the provisions of sub-regulations (1) and (3)(a) shall come into effect on 1 January 2015; and

(b) the provisions of sub-regulations (2) and (3)(b) shall come into effect on 1 January 2016.".

Amends regulation 18 of the principal regulations.

**6.** Immediately after paragraph (c) of sub-regulation (1) of regulation 18 of the principal regulations, there shall be added the following new paragraph:

"(d) The competent authority in Malta shall ensure that each individual Reportable Person is notified of a breach of security with regard to his data when that breach is likely to adversely affect the protection of his personal data or privacy.".

Amends regulation 21 of the principal regulations.

**7.** Regulation 21 of the principal regulations shall be amended as follows:

(a) the current regulation shall be renumbered as sub-regulation (1) thereof; and

(b) immediately after sub-regulation (1) thereof, as re-numbered, there shall be added the following new sub-regulations:

"(2) Reporting Malta Financial Institutions and the competent authority in Malta shall be considered to be data controllers for the purposes of the Data Protection Act.

(3) Notwithstanding sub-regulation (1), the Commissioner shall ensure that each Reporting Malta Financial Institution informs each individual Reportable Person concerned that the information relating to him referred to in regulation 13(2) will be collected and transferred in accordance with these regulations. The Commissioner shall also ensure that the Reporting Malta Financial Institution provides to that individual all information that he is entitled to under the Data Protection Act in sufficient time for the individual to exercise his data protection rights and, in any case, before the Reporting Malta Financial Institution concerned reports the information referred to in regulation 13(2) to the competent authority in Malta.

(4) Information processed in accordance with these regulations shall be retained for no longer than necessary to achieve the purposes of these regulations, and in any case not longer than nine years from the end of the year from when the information was reported to the Commissioner".

**8.** Regulation 22 of the principal regulations shall be substituted by the following:

Substitutes regulation 22 of the principal regulations.

"22. The automatic exchange of information pursuant to regulation 13 shall be sent using a standard computerized format aimed at facilitating automatic exchange and based on the existing computerised format pursuant to Article 9 of Directive 2003/48/EC, to be used for all types of automatic exchange of information, adopted by the Commission in accordance with the procedure referred to in Article 26(2) of the said Directive.".

**9.** The marginal note to regulation 23 of the principal regulations shall be substituted by the following: "Implementation and interpretation of FATCA Agreement and FATCA Regulations.".

Amends regulation 23 of the principal regulations.

## B 4476

Amends regulation 24 of the principal regulations.

**10.** In regulation 24 of the principal regulations, for the words "by 31st December, 2014 or thirty days following which an entity becomes a Malta Financial Institution, whichever date is the later." there shall be substituted the words "in such manner and within such period of time that the Commissioner may by means of guidelines published on the website of the Inland Revenue Department under the provisions of article 96(2) of the Income Tax Act require.".

Amends regulation 28 of the principal regulations.

**11.** In sub-regulation (3) of regulation 28 of the principal regulations, for the words "may elect, not to review, identify and report accounts" there shall be substituted the words "may elect to review, identify and report accounts".

Amends regulation 30 of the principal regulations.

**12.** Regulation 30 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words "by not later than 30 April after the end of the calendar year to which such information relates" there shall be substituted the words "in the manner and within such time period as set out in guidelines"; and

(b) in sub-regulation (2) thereof, for the words "in the manner set out in guidelines" there shall be substituted the words "in the manner and within such time period as set out in guidelines".

Adds new regulations to the principal regulations.

**13.** Immediately after regulation 35 of the principal regulations there shall be added the following new regulations:

"Implementation and interpretation.

Cap. 123.

Registration requirements.

Cap. 123.

**36.** The EU Administrative Cooperation Directive shall be implemented and interpreted (unless the context otherwise requires) in accordance with the guidelines published on the website of the Inland Revenue Department under the provisions of article 96(2) of the Income Tax Act.

**37.** A Malta Financial Institution shall register with the Commissioner for the purposes of the EU Administrative Cooperation Directive in such manner and within such period of time that the Commissioner may determine by means of guidelines published on the website of the Inland Revenue Department under the provisions of article 96(2) of the Income Tax Act require.

Use of third party service provider.

Due diligence obligations.

38. A Reporting Malta Financial Institution may use service providers to fulfil its reporting and due diligence obligations specified in these regulations: provided that these obligations shall remain the responsibility of the Reporting Malta Financial Institution.

39. For the purposes of the EU Administrative Cooperation Directive, a Reporting Malta Financial Institution shall apply the due diligence procedures specified in Section II to Section VII of Annex I, and Annex II to these regulations so as to be able to identify Reportable Accounts. In particular:

(a) the due diligence procedures in respect of Pre-Existing Individual Accounts shall be regulated in accordance with the provisions of Section III of Annex I to these regulations;

(b) the due diligence procedures in respect of New Individual Accounts shall be regulated in accordance with the provisions of Section IV of Annex I to these regulations;

(c) the due diligence procedures in respect of Pre-Existing Entity Accounts shall be regulated in accordance with the provisions of Section V of Annex I to these regulations;

(d) the due diligence procedures in respect of New Entity Accounts shall be regulated in accordance with the provisions of Section VI of Annex I to these regulations:

Provided that in carrying out this obligation, a Reporting Malta Financial Institution shall obtain satisfactory self-certification documentation or documentary evidence to establish the residence for tax purposes of the Account Holder. The term "documentary evidence" shall have the same meaning as that contained under E.6. of Section VIII of Annex I to these regulations:

Provided further that the self-certification may be in such form as the Commissioner may determine.

B 4478

Maintenance  
and retention  
obligations.  
Cap. 372.

Reporting  
obligations.

Cap. 123.

Access to  
information.

Cap. 372.

Anti-  
avoidance.

40. Subject to the provisions of article 19 of the Income Tax Management Act, a Reporting Malta Financial Institution shall maintain and retain all the documentation and information it collects in the course of meeting its reporting and due diligence obligations specified in these regulations for a minimum period of five years starting from the end of the year in which the information relates. In so doing, a Reporting Malta Financial Institution shall keep records of the steps undertaken in relation to any evidence relied upon for the performance of its obligations and adequate measures to obtain those records.

41. A Reporting Malta Financial Institution shall annually report the information specified in Section I of Annex I to these regulations in the manner and within such time period as set out in guidelines published on the website of the Inland Revenue Department under the provisions of article 96(2) of the Income Tax Act.

42. The Commissioner may use any information-gathering power under the Income Tax Acts, including those under the provisions of articles 10A and 20 of the Income Tax Management Act, to obtain any information specified in Section I of Annex I to these regulations, notwithstanding that the said information may not be required for the purposes of the Income Tax Acts. The provisions of this regulation shall be interpreted widely in the same manner as the interpretation found in regulation 5.

43. If a Reporting Malta Financial Institution enters into any transactions or schemes, the main purpose or one of the main purposes of which is to avoid any obligation under the EU Administrative Cooperation Directive, these regulations are to have effect as if such transactions or schemes had not been entered into.

Imposition of  
penalties.

44. (1) Where a Reporting Malta Financial Institution fails to comply with any of the obligations set out in the EU Administrative Cooperation Directive, the Reporting Malta Financial Institution shall be liable to the following penalties:

(a) where a Reporting Malta Financial Institution signs or otherwise positively affirms a false self-certification, to a penalty of five thousand euro (€5,000);

(b) where a Reporting Malta Financial Institution fails to retain the documentation and information it collected in the course of meeting its reporting and due diligence obligations for a minimum period of five years starting from the end of the year in which the information relates, to a penalty of two thousand five hundred euro (€2,500);

(c) where a Reporting Malta Financial Institution fails to apply the due diligence procedures specified in Section II through to Section VII of Annex I to these Regulations to a penalty of five thousand euro (€5,000);

(d) where a Reporting Malta Financial Institution fails to report the information required to be reported in terms of regulation 41 within the time stipulated in the guidelines published on the website of the Inland Revenue Department under the provisions of article 96(2) of the Income Tax Act, to a penalty of:

(i) two thousand five hundred euro (€2,500); and

(ii) one hundred euro (€100) for every day during which the default existed: provided that this penalty shall not exceed in total twenty thousand euro (€20,000);

Cap. 123.

B 4480

(e) where a Reporting Malta Financial Institution fails to report the information required to be reported in terms of regulation 41 in a complete and accurate manner, to a penalty of:

(i) in the case of minor errors -

(aa) two hundred euro (€200); and

(bb) fifty euro (€50) for every day during which the default existed: provided that this penalty shall not exceed in total five thousand euro (€5,000);

(ii) in the case of significant non-compliance, a penalty of fifty thousand euro (€50,000);

(f) where a Reporting Malta Financial Institution fails to comply with a request for information by the Commissioner made consequent to regulation 42, to a penalty of:

(i) one thousand euro (€1,000); and

(ii) one hundred euro (€100) for every day during which the default existed: provided that this penalty shall not exceed in total thirty thousand euro (€30,000).

(2) Where, notwithstanding any action taken by the Commissioner under these regulations, the penalties remain outstanding or the default in respect of which such penalties have been imposed continues to subsist, as the case may be, the Commissioner may serve further default notices in accordance with this regulation on the said Reporting Malta Financial Institution imposing with each successive notice double the amount of the said penalties, provided that such penalties shall not exceed in total fifty thousand euro (€50,000) in respect of each specific default:

Provided that each such successive note shall supersede the previous notice served on the Reporting Malta Financial Institution for the same default but any payment made in respect of that previous notice shall be taken into account accordingly.

Extension of application to jurisdictions that are not EU Member States.

45. The provisions of regulation 13(2), (3)(b), (4) and (5)(b), and regulations 36 to 44 shall apply *mutatis mutandis* in relation to jurisdictions that are not EU Member States, hereinafter in these regulations referred to as "Non-EU Reportable Jurisdictions":

Provided that for the purposes of this regulation:

(a) the term "Non-EU Reportable Jurisdiction" means a jurisdiction:

(i) with which an arrangement is in place pursuant to which there is an obligation in place to provide the information specified in Section 1 of Annex I to these regulations; and

(ii) which is identified in the list published by the Commissioner on the website of the Inland Revenue Department under the provisions of article 96(2) of the Income Tax Act;

(b) references in regulation 13(2), (3)(b), (4) and (5)(b), and in regulations 36 to 44 and in Annexes I and II of these regulations to "Member State" and "Member State Person" shall be construed to mean "Non-EU Reportable Jurisdiction" and "a person resident in a Non-EU Reportable Jurisdiction" respectively.

Cap. 123.

Extension of regulation 39 to other jurisdictions.

46. The provisions of regulation 39 shall apply *mutatis mutandis* to all financial accounts maintained by a Reporting Malta Financial Institution, irrespective of whether such accounts are held by a Reportable person or not:

B 4482

Provided that this information is to be collected and maintained in accordance with regulation 21. For the purposes of regulation 21(4), the information is to be kept for not longer than nine years from the end of the year in which the information is collected.".

Adds new  
Anexes to the  
principal  
regulations.

**14.** Immediately after regulation 46 of the principal regulations there shall be added the new annexes reproduced in the Schedule to these regulation.

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## SCHEDULE

(Regulation 14)

"ANNEX I

## REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION

This Annex lays down the reporting and due diligence rules that have to be applied by Reporting Malta Financial Institutions in order to enable Malta to communicate, by automatic exchange, the information referred to in Article 8(3a) of the EU Administrative Cooperation Directive. This Annex also describes the rules and administrative procedures that Malta has in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out below.

## SECTION I

## GENERAL REPORTING REQUIREMENTS

A. Subject to paragraphs C through E, each Reporting Malta Financial Institution must report to the competent authority of Malta the following information with respect to each Reportable Account of such Reporting Malta Financial Institution:

1. the name, address, Member State(s) of residence, TIN(s) and date and place of birth (in the case of an individual) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of the due diligence procedures consistent with Sections V, VI and VII, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, Member State(s) and (if any) other jurisdiction(s) of residence and TIN(s) of the Entity and the name, address, Member State(s) of residence, TIN(s) and date and place of birth of each Reportable Person;
2. the account number (or functional equivalent in the absence of an account number);
3. the name and identifying number (if any) of the Reporting Malta Financial Institution;
4. the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;

B 4484

5. in the case of any Custodial Account:

(a) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and

(b) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Malta Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;

6. in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and

7. in the case of any account not described in sub-paragraph A(5) or (6), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Malta Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

B. The information reported must identify the currency in which each amount is denominated.

C. Notwithstanding subparagraph A(1), with respect to each Reportable Account that is a Pre-existing Account, the TIN(s) or date of birth is not required to be reported if such TIN(s) or date of birth is not in the records of the Reporting Malta Financial Institution and is not otherwise required to be collected by such Reporting Malta Financial Institution under domestic law or any Union legal instrument. However, a Reporting Malta Financial Institution is required to use reasonable efforts to obtain the TIN(s) and date of birth with respect to Pre-existing Accounts by the end of the second calendar year following the year in which Pre-existing Accounts were identified as Reportable Accounts.

D. Notwithstanding subparagraph A(1), the TIN is not required to be reported if a TIN is not issued by the relevant Member State or other jurisdiction of residence.

E. Notwithstanding subparagraph A(1), the place of birth is not required to be reported unless:

(1) the Reporting Malta Financial Institution is otherwise required

to obtain and report it under domestic law or the Reporting Malta Financial Institution is or has been otherwise required to obtain and report it under any Union legal instrument in effect or that was in effect on 5 January 2015; and

(2) it is available in the electronically searchable data maintained by the Reporting Malta Financial Institution.

## SECTION II

### GENERAL DUE DILIGENCE REQUIREMENTS

A. An account is treated as a Reportable Account beginning as of the date it is identified as such pursuant to the due diligence procedures in Sections II through VII and, unless otherwise provided, information with respect to a Reportable Account must be reported annually in the calendar year following the year to which the information relates.

B. The balance or value of an account is determined as of the last day of the calendar year or other appropriate reporting period.

C. Where a balance or value threshold is to be determined as of the last day of a calendar year, the relevant balance or value must be determined as of the last day of the reporting period that ends with or within that calendar year.

D. Reporting Malta Financial Institutions may use service providers to fulfil their reporting and due diligence obligations imposed on such Reporting Malta Financial Institutions, as contemplated in these Regulations, but these obligations shall remain the responsibility of the Reporting Malta Financial Institutions.

E. Reporting Malta Financial Institutions may apply the due diligence procedures for New Accounts to Pre-existing Accounts, and the due diligence procedures for High Value Accounts to Lower Value Accounts. Where a Reporting Malta Financial Institution opts to apply the due diligence procedures to New Accounts to be used for Pre-existing Accounts, the rules otherwise applicable to Pre-existing Accounts continue to apply.

## SECTION III

### DUE DILIGENCE FOR PRE-EXISTING INDIVIDUAL ACCOUNTS

A. Introduction. The following procedures apply for purposes of identifying Reportable Accounts among Pre-existing Individual Accounts.

B. Lower Value Accounts. The following procedures apply with respect to Lower Value Accounts.

1. Residence Address. If the Reporting Malta Financial Institution has in

B 4486

its records a current residence address for the individual Account Holder based on Documentary Evidence, the Reporting Malta Financial Institution may treat the individual Account Holder as being a resident for tax purposes of the Member State or other jurisdiction in which the address is located for purposes of determining whether such individual Account Holder is a Reportable Person.

2. Electronic Record Search. If the Reporting Malta Financial Institution does not rely on a current residence address for the individual Account Holder based on Documentary Evidence as set forth in subparagraph B(1), the Reporting Malta Financial Institution must review electronically searchable data maintained by the Reporting Malta Financial Institution for any of the following *indicia* and apply sub-paragraphs B(3) to (6):

- (a) identification of the Account Holder as a resident of a Member State;
- (b) current mailing or residence address (including a post office box) in a Member State;
- (c) one or more telephone numbers in a Member State and no telephone number in the Member State of the Reporting Malta Financial Institution;
- (d) standing instructions (other than with respect to a Depository Account) to transfer funds to an account maintained in a Member State;
- (e) currently effective power of attorney or signatory authority granted to a person with an address in a Member State; or
- (f) a "hold mail" instruction or "in-care-of" address in a Member State if the Reporting Malta Financial Institution does not have any other address on file for the Account Holder.

3. If none of the *indicia* listed in subparagraph B(2) are discovered in the electronic search, then no further action is required until there is a change in circumstances that results in one or more *indicia* being associated with the account, or the account becomes a High Value Account.

4. If any of the *indicia* listed in sub-paragraph B(2)(a) through (e) are discovered in the electronic search, or if there is a change in circumstances that results in one or more *indicia* being associated with the account, then the Reporting Malta Financial Institution must treat the Account Holder as a resident for tax purposes of each Member State for which an *indicium* is identified, unless it elects to apply sub-paragraph B(6) and one of the exceptions in that sub-paragraph applies with respect to that account.

5. If a "hold mail" instruction or "in-care-of" address is discovered in the electronic search and no other address and none of the other *indicia* listed in sub-

paragraph B(2)(a) through (e) are identified for the Account Holder, the Reporting Malta Financial Institution must, in the order most appropriate to the circumstances, apply the paper record search described in sub-paragraph C(2), or seek to obtain from the Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of such Account Holder. If the paper search fails to establish an *indicium* and the attempt to obtain the self-certification or Documentary Evidence is not successful, the Reporting Malta Financial Institution must report the account to the competent authority of Malta as an undocumented account.

6. Notwithstanding a finding of *indicia* under sub-paragraph B(2), a Reporting Malta Financial Institution is not required to treat an Account Holder as a resident of a Member State if:

(a) the Account Holder information contains a current mailing or residence address in that Member State, one or more telephone numbers in that Member State (and no telephone number in the Member State of the Reporting Malta Financial Institution) or standing instructions (with respect to Financial Accounts other than Depository Accounts) to transfer funds to an account maintained in a Member State, and the Reporting Malta Financial Institution obtains, or has previously reviewed and maintains, a record of:

(i) a self-certification from the Account Holder of the Member State(s) or other jurisdiction(s) of residence of such Account Holder that does not include that Member State; and

(ii) Documentary Evidence establishing the Account Holder's non-reportable status;

(b) the Account Holder information contains a currently effective power of attorney or signatory authority granted to a person with an address in that Member State, and the Reporting Malta Financial Institution obtains, or has previously reviewed and maintains, a record of:

(i) a self-certification from the Account Holder of the Member State(s) or other jurisdiction(s) of residence of such Account Holder that does not include that Member State; or

(ii) Documentary Evidence establishing the Account Holder's non-reportable status.

C. Enhanced Review Procedures for High Value Accounts. The following enhanced review procedures apply with respect to High Value Accounts.

1. Electronic Record search. With respect to High Value Accounts, the Reporting Malta Financial Institution must review electronically searchable data maintained by the Reporting Malta Financial Institution for any of the *indicia*

B 4488

described in sub-paragraph B(2).

2. Paper Record Search. If the Reporting Malta Financial Institution's electronically searchable databases include fields for, and capture all of the information described in, sub-paragraph C(3), then a further paper record search is not required. If the electronic databases do not capture all of this information, then with respect to a High Value Account, the Reporting Malta Financial Institution must also review the current customer master file and, to the extent not contained in the current customer master file, the following documents associated with the account and obtained by the Reporting Malta Financial Institution within the last five years for any of the *indicia* described in sub-paragraph B(2):

- (a) the most recent Documentary Evidence collected with respect to the account;
- (b) the most recent account opening contract or documentation;
- (c) the most recent documentation obtained by the Reporting Malta Financial Institution pursuant to AML/KYC Procedures or for other regulatory purposes;
- (d) any power of attorney or signature authority forms currently in effect; and
- (e) any standing instructions (other than with respect to a Depository Account) to transfer funds currently in effect.

3. Exception To The Extent Databases Contain Sufficient Information. A Reporting Malta Financial Institution is not required to perform the paper record search described in sub-paragraph C(2) to the extent the Reporting Malta Financial Institution's electronically searchable information includes the following:

- (a) the Account Holder's residence status;
- (b) the Account Holder's residence address and mailing address currently on file with the Reporting Malta Financial Institution;
- (c) the Account Holder's telephone number(s) currently on file, if any, with the Reporting Malta Financial Institution;
- (d) in the case of Financial Accounts other than Depository Accounts, whether there are standing instructions to transfer funds in the account to another account (including an account at another branch of the Reporting Malta Financial Institution or another Malta Financial Institution);
- (e) whether there is a current "in-care-of" address or "hold mail" instruction for the Account Holder; and

(f) whether there is any power of attorney or signatory authority for the account.

4. Relationship Manager Inquiry for Actual Knowledge. In addition to the electronic and paper record searches described in sub-paragraphs C(1) and (2), the Reporting Malta Financial Institution must treat as a Reportable Account any High Value Account assigned to a relationship manager (including any Financial Accounts aggregated with that High Value Account) if the relationship manager has actual knowledge that the Account Holder is a Reportable Person.

5. Effect of Finding *Indicia*.

(a) If none of the *indicia* listed in sub-paragraph B(2) are discovered in the enhanced review of High Value Accounts described in paragraph C, and the account is not identified as held by a Reportable Person in sub-paragraph C(4), then further action is not required until there is a change in circumstances that results in one or more *indicia* being associated with the account.

(b) If any of the *indicia* listed in sub-paragraphs B(2)(a) through (e) are discovered in the enhanced review of High Value Accounts described in paragraph C, or if there is a subsequent change in circumstances that results in one or more *indicia* being associated with the account, then the Reporting Malta Financial Institution must treat the account as a Reportable Account with respect to each Member State for which an *indicium* is identified unless it elects to apply sub-paragraph B(6) and one of the exceptions in that sub-paragraph applies with respect to that account.

(c) If a "hold mail" instruction or "in-care-of" address is discovered in the enhanced review of High Value Accounts described in paragraph C, and no other address and none of the other *indicia* listed in subparagraphs B(2)(a) through (e) are identified for the Account Holder, the Reporting Malta Financial Institution must obtain from such Account Holder a self-certification or Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Malta Financial Institution cannot obtain such self-certification or Documentary Evidence, it must report the account to the competent authority of Malta as an undocumented account.

6. If a Pre-existing Individual Account is not a High Value Account as of 31 December 2015, but becomes a High Value Account as of the last day of a subsequent calendar year, the Reporting Malta Financial Institution must complete the enhanced review procedures described in paragraph C with respect to such account within the calendar year following the year in which the account becomes a High Value Account. If based on this review such account is identified as a Reportable Account, the Reporting Malta Financial Institution must report the required information about such account with respect to the year in which it is identified as a Reportable Account and subsequent years on an annual basis, unless

B 4490

the Account Holder ceases to be a Reportable Person.

7. Once a Reporting Malta Financial Institution applies the enhanced review procedures described in paragraph C to a High Value Account, the Reporting Malta Financial Institution is not required to reapply such procedures, other than the relationship manager inquiry described in sub-paragraph C(4), to the same High Value Account in any subsequent year unless the account is undocumented where the Reporting Malta Financial Institution should reapply them annually until such account ceases to be undocumented.

8. If there is a change of circumstances with respect to a High Value Account that results in one or more *indicia* described in sub-paragraph B(2) being associated with the account, then the Reporting Malta Financial Institution must treat the account as a Reportable Account with respect to each Member State for which an *indicium* is identified unless it elects to apply subparagraph B(6) and one of the exceptions in that sub-paragraph applies with respect to that account.

9. A Reporting Malta Financial Institution must implement procedures to ensure that a relationship manager identifies any change in circumstances of an account. For example, if a relationship manager is notified that the Account Holder has a new mailing address in a Member State, the Reporting Malta Financial Institution is required to treat the new address as a change in circumstances and, if it elects to apply sub-paragraph B(6), is required to obtain the appropriate documentation from the Account Holder.

D. Review of Pre-existing High Value Individual Accounts must be completed by 31 December 2016. Review of Pre-existing Lower Value Individual Accounts must be completed by 31 December 2017.

E. Any Pre-existing Individual Account that has been identified as a Reportable Account under this Section must be treated as a Reportable Account in all subsequent years, unless the Account Holder ceases to be a Reportable Person.

## SECTION IV

### DUE DILIGENCE FOR NEW INDIVIDUAL ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among New Individual Accounts.

A. With respect to New Individual Accounts, upon account opening, the Reporting Malta Financial Institution must obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Malta Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Malta Financial Institution in connection with the opening of the account, including any documentation collected pursuant

to AML/KYC Procedures.

B. If the self-certification establishes that the Account Holder is resident for tax purposes in a Member State, the Reporting Malta Financial Institution must treat the account as a Reportable Account and the self-certification must also include the Account Holder's TIN with respect to such Member State (subject to paragraph D of Section I) and date of birth.

C. If there is a change of circumstances with respect to a New Individual Account that causes the Reporting Malta Financial Institution to know, or have reason to know, that the original self-certification is incorrect or unreliable, the Reporting Malta Financial Institution cannot rely on the original self-certification and must obtain a valid self-certification that establishes the residence(s) for tax purposes of the Account Holder.

## SECTION V

### DUE DILIGENCE FOR PRE-EXISTING ENTITY ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among Pre-existing Entity Accounts.

A. Entity Accounts Not Required to Be Reviewed, Identified or Reported. Unless the Reporting Malta Financial Institution elects otherwise, either with respect to all Pre-existing Entity Accounts or, separately, with respect to any clearly identified group of such accounts, a Pre-existing Entity Account with an aggregate account balance or value that does not exceed, as of 31 December 2015, an amount denominated in Euro that corresponds to USD 250 000, is not required to be reviewed, identified, or reported as a Reportable Account until the aggregate account balance or value exceeds that amount as of the last day of any subsequent calendar year.

B. Entity Accounts Subject to Review. A Pre-existing Entity Account that has an aggregate account balance or value that exceeds, as of 31 December 2015, an amount denominated in Euro that corresponds to USD 250 000, and a Pre-existing Entity Account that does not exceed, as of 31 December 2015, that amount but the aggregate account balance or value of which exceeds such amount as of the last day of any subsequent calendar year, must be reviewed in accordance with the procedures set forth in paragraph D.

C. Entity Accounts With Respect to Which Reporting Is Required. With respect to Pre-existing Entity Accounts described in paragraph B, only accounts that are held by one or more Entities that are Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons, shall be treated as Reportable Accounts.

D. Review Procedures for Identifying Entity Accounts With Respect to

B 4492

Which Reporting Is Required. For Pre-existing Entity Accounts described in paragraph B, a Reporting Malta Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. Determine Whether the Entity Is a Reportable Person.

(a) Review information maintained for regulatory or customer relationship purposes (including information collected pursuant to AML/KYC Procedures) to determine whether the information indicates that the Account Holder is resident in a Member State. For this purpose, information indicating that the Account Holder is resident in a Member State includes a place of incorporation or organisation, or an address in a Member State.

(b) If the information indicates that the Account Holder is resident in a Member State, the Reporting Malta Financial Institution must treat the account as a Reportable Account unless it obtains a self-certification from the Account Holder, or reasonably determines based on information in its possession or that is publicly available, that the Account Holder is not a Reportable Person.

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons who are Reportable Persons. With respect to an Account Holder of a Pre-existing Entity Account (including an Entity that is a Reportable Person), the Reporting Malta Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Malta Financial Institution must follow the guidance in sub-paragraphs D(2)(a) through (c) in the order most appropriate under the circumstances.

(a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Malta Financial Institution must obtain a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in sub-paragraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

(b) Determining the Controlling Persons of an Account Holder. For the purposes of determining the Controlling Persons of an

Account Holder, a Reporting Malta Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

(c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Malta Financial Institution may rely on:

(i) information collected and maintained pursuant to AML/KYC Procedures in the case of a Pre-existing Entity Account held by one or more NFEs with an aggregate account balance or value that does not exceed an amount denominated in Euro that corresponds to USD 1 000 000; or

(ii) a self-certification from the Account Holder or such Controlling Person of the Member State(s) or other jurisdiction(s) in which the controlling person is resident for tax purposes.

#### E. Timing of Review and Additional Procedures Applicable to Pre-existing Entity Accounts

1. Review of Pre-existing Entity Accounts with an aggregate account balance or value that exceeds, as of 31 December 2015, an amount denominated in Euro that corresponds to USD 250 000, must be completed by 31 December 2017.

2. Review of Pre-existing Entity Accounts with an aggregate account balance or value that does not exceed, as of 31 December 2015, an amount denominated in Euro that corresponds to USD 250 000 but exceeds that amount as of 31 December of a subsequent year, must be completed within the calendar year following the year in which the aggregate account balance or value exceeds such amount.

3. If there is a change of circumstances with respect to a Pre-existing Entity Account that causes the Reporting Malta Financial Institution to know, or have reason to know, that the self-certification or other documentation associated with an account is incorrect or unreliable, the Reporting Malta Financial Institution must re-determine the status of the account in accordance with the procedures set forth in paragraph D.

### SECTION VI

#### DUE DILIGENCE FOR NEW ENTITY ACCOUNTS

The following procedures apply for purposes of identifying Reportable Accounts among New Entity Accounts.

B 4494

Review Procedures for Identifying Entity Accounts With Respect to Which Reporting Is Required. For New Entity Accounts, a Reporting Malta Financial Institution must apply the following review procedures to determine whether the account is held by one or more Reportable Persons, or by Passive NFEs with one or more Controlling Persons who are Reportable Persons:

1. Determine Whether the Entity Is a Reportable Person.

(a) Obtain a self-certification, which may be part of the account opening documentation, that allows the Reporting Malta Financial Institution to determine the Account Holder's residence(s) for tax purposes and confirm the reasonableness of such self-certification based on the information obtained by the Reporting Malta Financial Institution in connection with the opening of the account, including any documentation collected pursuant to AML/KYC Procedures. If the Entity certifies that it has no residence for tax purposes, the Reporting Malta Financial Institution may rely on the address of the principal office of the Entity to determine the residence of the Account Holder.

(b) If the self-certification indicates that the Account Holder is resident in a Member State, the Reporting Malta Financial Institution must treat the account as a Reportable Account, unless it reasonably determines based on information in its possession or that is publicly available that the Account Holder is not a Reportable Person with respect to such Member State.

2. Determine Whether the Entity is a Passive NFE with One or More Controlling Persons Who Are Reportable Persons. With respect to an Account Holder of a New Entity Account (including an Entity that is a Reportable Person), the Reporting Malta Financial Institution must determine whether the Account Holder is a Passive NFE with one or more Controlling Persons who are Reportable Persons. If any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account. In making these determinations the Reporting Malta Financial Institution must follow the guidance in sub-paragraphs A(2)(a) through (c) in the order most appropriate under the circumstances.

(a) Determining whether the Account Holder is a Passive NFE. For purposes of determining whether the Account Holder is a Passive NFE, the Reporting Malta Financial Institution must rely on a self-certification from the Account Holder to establish its status, unless it has information in its possession or that is publicly available, based on which it can reasonably determine that the Account Holder is an Active NFE or a Financial Institution other than an Investment Entity described in sub-paragraph A(6)(b) of Section VIII that is not a Participating Jurisdiction Financial Institution.

(b) Determining the Controlling Persons of an Account Holder. For purposes of determining the Controlling Persons of an Account Holder, a Reporting Malta Financial Institution may rely on information collected and maintained pursuant to AML/KYC Procedures.

(c) Determining whether a Controlling Person of a Passive NFE is a Reportable Person. For purposes of determining whether a controlling person of a Passive NFE is a Reportable Person, a Reporting Malta Financial Institution may rely on a self-certification from the Account Holder or such Controlling Person.

## SECTION VII

### SPECIAL DUE DILIGENCE RULES

The following additional rules apply in implementing the due diligence procedures described above:

A. Reliance on Self-Certifications and Documentary Evidence. A Reporting Malta Financial Institution may not rely on a self- certification or Documentary Evidence if the Reporting Malta Financial Institution knows or has reason to know that the self-certification or Documentary Evidence is incorrect or unreliable.

B. Alternative Procedures for Financial Accounts held by Individual Beneficiaries of a Cash Value Insurance Contract or an Annuity Contract and for a Group Cash Value Insurance Contract or Group Annuity Contract. A Reporting Malta Financial Institution may presume that an individual beneficiary (other than the owner) of a Cash Value Insurance Contract or an Annuity Contract receiving a death benefit is not a Reportable Person and may treat such Financial Account as other than a Reportable Account unless the Reporting Malta Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person. A Reporting Malta Financial Institution has reason to know that a beneficiary of a Cash Value Insurance Contract or an Annuity Contract is a Reportable Person if the information collected by the Reporting Malta Financial Institution and associated with the beneficiary contains indicia as described in paragraph B of Section III. If a Reporting Malta Financial Institution has actual knowledge, or reason to know, that the beneficiary is a Reportable Person, the Reporting Malta Financial Institution must follow the procedures in paragraph B of Section III.

A Reporting Malta Financial Institution may treat a Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract as a Financial Account that is not a Reportable Account until the date on which an amount is payable to the employee/certificate holder or beneficiary, if the Financial Account that is a member's interest in a Group Cash Value Insurance Contract or Group Annuity Contract meets the following requirements:

B 4496

- (i) the Group Cash Value Insurance Contract or Group Annuity Contract is issued to an employer and covers 25 or more employees/certificate holders;
- (ii) the employee/certificate holders are entitled to receive any contract value related to their interests and to name beneficiaries for the benefit payable upon the employee's death; and
- (iii) the aggregate amount payable to any employee/certificate holder or beneficiary does not exceed an amount denominated in Euro that corresponds to USD 1 000 000.

The term "Group Cash Value Insurance Contract" means a Cash Value Insurance Contract that (i) provides coverage on individuals who are affiliated through an employer, trade association, labour union, or other association or group; and (ii) charges a premium for each member of the group (or member of a class within the group) that is determined without regard to the individual health characteristics other than age, gender, and smoking habits of the member (or class of members) of the group.

The term "Group Annuity Contract" means an Annuity Contract under which the obligees are individuals who are affiliated through an employer, trade association, labour union, or other association or group.

### C. Account Balance Aggregation and Currency Rules

1. Aggregation of Individual Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an individual, a Reporting Malta Financial Institution is required to aggregate all Financial Accounts maintained by the Reporting Malta Financial Institution, or by a Related Entity, but only to the extent that the Reporting Malta Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this sub-paragraph.

2. Aggregation of Entity Accounts. For purposes of determining the aggregate balance or value of Financial Accounts held by an Entity, a Reporting Malta Financial Institution is required to take into account all Financial Accounts that are maintained by the Reporting Malta Financial Institution, or by a Related Entity, but only to the extent that the Reporting Malta Financial Institution's computerised systems link the Financial Accounts by reference to a data element such as client number or TIN, and allow account balances or values to be aggregated. Each holder of a jointly held Financial Account shall be attributed the entire balance or value of the jointly held Financial Account for purposes of applying the aggregation requirements described in this sub-paragraph.

3. Special Aggregation Rule Applicable to Relationship Managers. For purposes of determining the aggregate balance or value of Financial Accounts held by a person to determine whether a financial account is a High Value Account, a Reporting Malta Financial Institution is also required, in the case of any Financial Accounts that a relationship manager knows, or has reason to know, are directly or indirectly owned, controlled, or established (other than in a fiduciary capacity) by the same person, to aggregate all such accounts.

4. Amounts Read to Include Equivalent in Other Currencies. All amounts denominated in the domestic currency of each Member State shall be read to include equivalent amounts in other currencies, as determined by domestic law.

## SECTION VIII

### DEFINED TERMS

The following terms have the meanings set forth below:

#### A. Reporting Malta Financial Institution

1. The term "Reporting Malta Financial Institution" means any Malta Financial Institution that is not a Non-Reporting Malta Financial Institution. The term "Malta Financial Institution" means: (i) any Malta Financial Institution that is resident in Malta, but excludes any branch of that Malta Financial Institution that is located outside Malta; and (ii) any branch of a Malta Financial Institution that is not resident in Malta, if that branch is located in that Malta.

2. The term "Participating Jurisdiction Financial Institution" means (i) any Financial Institution that is resident in a Participating Jurisdiction, but excludes any branch of that Financial Institution that is located outside such Participating Jurisdiction; and (ii) any branch of a Financial Institution that is not resident in a Participating Jurisdiction, if that branch is located in such Participating Jurisdiction.

3. The term "Financial Institution" means a Custodial Institution, a Depository Institution, an Investment Entity, or a Specified Insurance Company.

4. The term "Custodial Institution" means any Entity that holds, as a substantial portion of its business, Financial Assets for the account of others. An Entity holds Financial Assets for the account of others as a substantial portion of its business if the Entity's gross income attributable to the holding of Financial Assets and related financial services equals or exceeds 20% of the Entity's gross income during the shorter of: (i) the three-year period that ends on 31 December (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or (ii) the period during which the Entity has been in existence.

5. The term "Depository Institution" means any Entity that accepts

B 4498

deposits in the ordinary course of a banking or similar business.

6. The term "Investment Entity" means any Entity:

(a) which primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer:

(i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;

(ii) individual and collective portfolio management; or

(iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons; or

(b) the gross income of which is primarily attributable to investing, reinvesting, or trading in Financial Assets, if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in sub-paragraph A(6)(a).

An Entity is treated as primarily conducting as a business one or more of the activities described in sub-paragraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for the purposes of sub-paragraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence. The term "Investment Entity" does not include an Entity that is an Active NFE because that Entity meets any of the criteria in sub-paragraphs D(8)(d) through (g).

This paragraph shall be interpreted in a manner consistent with similar language set forth in the definition of "financial institution" in the 2012 Financial Action Task Force Recommendations.

7. The term "Financial Asset" includes a security (for example, a share of stock in a corporation; partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; note, bond, debenture, or other evidence of indebtedness), partnership interest, commodity, swap (for example, interest rate swaps, currency swaps, basis swaps, interest rate caps, interest rate floors, commodity swaps, equity swaps, equity index swaps, and similar agreements), Insurance Contract or Annuity Contract, or any interest (including a futures or forward contract or option) in a security, partnership interest, commodity, swap, Insurance Contract, or Annuity Contract. The term "Financial Asset" does not

include a non-debt, direct interest in real property.

8. The term "Specified Insurance Company"" means any Entity that is an insurance company (or the holding company of an insurance company) which issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract or an Annuity Contract.

#### B. Non-Reporting Malta Financial Institution

1. The term "Non-Reporting Malta Financial Institution" means any Financial Institution which is:

(a) a Governmental Entity, International Organisation or Central Bank, other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depository Institution;

(b) a Broad Participation Retirement Fund; a Narrow Participation Retirement Fund; a Pension Fund of a Governmental Entity, International Organisation or Central Bank; or a Qualified Credit Card Issuer;

(c) any other Entity that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the Entities described in sub-paragraphs B(1)(a) and (b), and is included in the list of Non-Reporting Malta Financial Institutions referred to in Article 8(7a) of the EU Administrative Cooperation Directive, provided that the status of such Entity as a Non-Reporting Malta Financial Institution does not frustrate the purposes of the EU Administrative Cooperation Directive;

(d) an Exempt Collective Investment Vehicle; or

(e) a trust to the extent that the trustee of the trust is a Reporting Malta Financial Institution and reports all information required to be reported pursuant to Section I with respect to all Reportable Accounts of the trust.

2. The term "Governmental Entity" means the government of a Member State or other jurisdiction, any political subdivision of a Member State or other jurisdiction (which, for the avoidance of doubt, includes a state, province, county, or municipality), or any wholly owned agency or instrumentality of a Member State or other jurisdiction or of any one or more of the foregoing (each, a "Governmental Entity"). This category is comprised of the integral parts, controlled entities, and political subdivisions of a Member State or other jurisdiction.

(a) An "integral part" of a Member State or other jurisdiction means any person, organisation, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a

## B 4500

Member State or other jurisdiction. The net earnings of the governing authority must be credited to its own account or to other accounts of the Member State or other jurisdiction, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity.

(b) A "controlled entity" means an Entity which is separate in form from the Member State or other jurisdiction or which otherwise constitutes a separate juridical entity, provided that:

(i) the Entity is wholly owned and controlled by one or more Governmental Entities directly or through one or more controlled entities;

(ii) the Entity's net earnings are credited to its own account or to the accounts of one or more Governmental Entities, with no portion of its income inuring to the benefit of any private person; and

(iii) the Entity's assets vest in one or more Governmental Entities upon dissolution.

(c) Income does not inure to the benefit of private persons if such persons are the intended beneficiaries of a governmental programme, and the programme activities are performed for the general public with respect to the common welfare or relate to the administration of some phase of government. Notwithstanding the foregoing, however, income is considered to inure to the benefit of private persons if the income is derived from the use of a Governmental Entity to conduct a commercial business, such as a commercial banking business, that provides financial services to private persons.

3. The term "International Organisation" means any international organisation or wholly owned agency or instrumentality thereof. This category includes any intergovernmental organisation (including a supranational organisation) (i) that is comprised primarily of governments; (ii) that has in effect a headquarters or substantially similar agreement with the Member State; and (iii) the income of which does not inure to the benefit of private persons.

4. The term "Central Bank" means an institution that is by law or government sanction the principal authority, other than the government of the Member State itself, issuing instruments intended to circulate as currency. Such an institution may include an instrumentality that is separate from the government of the Member State, whether or not owned in whole or in part by the Member State.

5. The term "Broad Participation Retirement Fund" means a fund established to provide retirement, disability, or death benefits, or any combination thereof, to beneficiaries who are current or former employees (or persons

designated by such employees) of one or more employers in consideration for services rendered, provided that the fund:

- (a) does not have a single beneficiary with a right to more than 5% of the fund's assets;
- (b) is subject to government regulation and provides information reporting to the tax authorities; and
- (c) satisfies at least one of the following requirements:
  - (i) the fund is generally exempt from tax on investment income, or taxation of such income is deferred or taxed at a reduced rate, due to its status as a retirement or pension plan;
  - (ii) the fund receives at least 50% of its total contributions (other than transfers of assets from other plans described in sub-paragraphs B(5) through (7) or from retirement and pension accounts described in sub-paragraph C(17)(a)) from the sponsoring employers;
  - (iii) distributions or withdrawals from the fund are allowed only upon the occurrence of specified events related to retirement, disability, or death (except roll-over distributions to other retirement funds described in sub-paragraphs B(5) through (7) or retirement and pension accounts described in sub-paragraph C(17)(a)), or penalties apply to distributions or withdrawals made before such specified events; or
  - (iv) contributions (other than certain permitted make-up contributions) by employees to the fund are limited by reference to earned income of the employee or may not exceed, annually, an amount denominated in Euro that corresponds to USD 50 000, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

6. The term "Narrow Participation Retirement Fund" means a fund established to provide retirement, disability, or death benefits to beneficiaries who are current or former employees (or persons designated by such employees) of one or more employers in consideration for services rendered, provided that:

- (a) the fund has fewer than 50 participants;
- (b) the fund is sponsored by one or more employers that are not Investment Entities or Passive NFEs;
- (c) the employee and employer contributions to the fund (other than transfers of assets from retirement and pension accounts described in sub-paragraph C(17)(a)) are limited by reference to earned income and

B 4502

compensation of the employee, respectively;

(d) participants that are not residents of the Member State in which the fund is established are not entitled to more than 20 % of the fund's assets; and

(e) the fund is subject to government regulation and provides information reporting to the tax authorities.

7. The term "Pension Fund of a Governmental Entity, International Organisation or Central Bank" means a fund established by a Governmental Entity, International Organisation or Central Bank to provide retirement, disability, or death benefits to beneficiaries or participants who are current or former employees (or persons designated by such employees), or who are not current or former employees, if the benefits provided to such beneficiaries or participants are in consideration of personal services performed for the Governmental Entity, International Organisation or Central Bank.

8. The term "Qualified Credit Card Issuer" means a Financial Institution satisfying the following requirements:

(a) the Financial Institution is a Financial Institution solely because it is an issuer of credit cards that accepts deposits only when a customer makes a payment in excess of a balance due with respect to the card and the overpayment is not immediately returned to the customer; and

(b) beginning on or before 1 January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of an amount denominated in Euro that corresponds to USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns.

9. The term "Exempt Collective Investment Vehicle" means an Investment Entity that is regulated as a collective investment vehicle, provided that all of the interests in the collective investment vehicle are held by or through individuals or Entities that are not Reportable Persons, except a Passive NFE with Controlling Persons who are Reportable Persons.

An Investment Entity that is regulated as a collective investment vehicle does not fail to qualify under sub-paragraph B(9) as an Exempt Collective Investment Vehicle, solely because the collective investment vehicle has issued physical shares in bearer form, provided that:

- (a) the collective investment vehicle has not issued, and does not issue, any physical shares in bearer form after 31 December 2015;
- (b) the collective investment vehicle retires all such shares upon surrender;
- (c) the collective investment vehicle performs the due diligence procedures set forth in Sections II through VII and reports any information required to be reported with respect to any such shares when such shares are presented for redemption or other payment; and
- (d) the collective investment vehicle has in place policies and procedures to ensure that such shares are redeemed or immobilised as soon as possible, and in any event prior to 1 January 2018.

### C. Financial Account

1. The term "Financial Account" means an account maintained by a Financial Institution, and includes a Depository Account, a Custodial Account and:

- (a) in the case of an Investment Entity, any equity or debt interest in the Financial Institution. Notwithstanding the foregoing, the term "Financial Account" does not include any equity or debt interest in an Entity that is an Investment Entity solely because it (i) renders investment advice to, and acts on behalf of; or (ii) manages portfolios for, and acts on behalf of, a customer for the purpose of investing, managing, or administering Financial Assets deposited in the name of the customer with a Financial Institution other than such Entity;

- (b) in the case of a Financial Institution not described in subparagraph C(1)(a), any equity or debt interest in the Financial Institution, if the class of interests was established with the purpose of avoiding reporting in accordance with Section I; and

- (c) any Cash Value Insurance Contract and any Annuity Contract issued or maintained by a Financial Institution, other than a non-investment-linked, non-transferable immediate life annuity that is issued to an individual and monetises a pension or disability benefit provided under an account that is an Excluded Account.

The term "Financial Account" does not include any account that is an Excluded Account.

2. The term "Depository Account" includes any commercial, checking, savings, time, or thrift account, or an account that is evidenced by a certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness, or other similar instrument maintained by a Financial Institution in the ordinary course of a banking or similar business. A Depository Account also includes an

B 4504

amount held by an insurance company pursuant to a guaranteed investment contract or similar agreement to pay or credit interest thereon.

3. The term "Custodial Account" means an account (other than an Insurance Contract or Annuity Contract) which holds one or more Financial Assets for the benefit of another person.

4. The term "Equity Interest" means, in the case of a partnership that is a Financial Institution, either a capital or profits interest in the partnership. In the case of a trust that is a Financial Institution, an Equity Interest is considered to be held by any person treated as a settlor or beneficiary of all or a portion of the trust, or any other natural person exercising ultimate effective control over the trust. A Reportable Person will be treated as being a beneficiary of a trust if such Reportable Person has the right to receive directly or indirectly (for example, through a nominee) a mandatory distribution or may receive, directly or indirectly, a discretionary distribution from the trust.

5. The term "Insurance Contract" means a contract (other than an Annuity Contract) under which the issuer agrees to pay an amount upon the occurrence of a specified contingency involving mortality, morbidity, accident, liability, or property risk.

6. The term "Annuity Contract" means a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals. The term also includes a contract that is considered to be an Annuity Contract in accordance with the law, regulation, or practice of the Member State or other jurisdiction in which the contract was issued, and under which the issuer agrees to make payments for a term of years.

7. The term "Cash Value Insurance Contract" means an Insurance Contract (other than an indemnity reinsurance contract between two insurance companies) that has a Cash Value.

8. The term "Cash Value" means the greater of (i) the amount that the policyholder is entitled to receive upon surrender or termination of the contract (determined without reduction for any surrender charge or policy loan); and (ii) the amount the policyholder can borrow under or with regard to the contract. Notwithstanding the foregoing, the term "Cash Value" does not include an amount payable under an Insurance Contract:

(a) solely by reason of the death of an individual insured under a life insurance contract;

(b) as a personal injury or sickness benefit or other benefit providing indemnification of an economic loss incurred upon the occurrence of the event insured against;

(c) as a refund of a previously paid premium (less cost of insurance charges whether or not actually imposed) under an Insurance Contract (other than an investment-linked life insurance or annuity contract) due to cancellation or termination of the contract, decrease in risk exposure during the effective period of the contract, or arising from the correction of a posting or similar error with regard to the premium for the contract;

(d) as a policyholder dividend (other than a termination dividend) provided that the dividend relates to an Insurance Contract under which the only benefits payable are described in sub-paragraph C(8)(b); or

(e) as a return of an advance premium or premium deposit for an Insurance Contract for which the premium is payable at least annually if the amount of the advance premium or premium deposit does not exceed the next annual premium that will be payable under the contract.

9. The term "Pre-existing Account" means:

(a) a Financial Account maintained by a Reporting Malta Financial Institution as of 31 December 2015;

(b) any Financial Account of an Account Holder, regardless of the date such Financial Account was opened, if:

(i) the Account Holder also holds with the Reporting Malta Financial Institution (or with a Related Entity within the same Member State as the Reporting Financial Institution) a Financial Account that is a Pre-existing Account under sub-paragraph C(9)(a);

(ii) the Reporting Malta Financial Institution (and, as applicable, the Related Entity within the same Member State as the Reporting Financial Institution) treats both of the aforementioned Financial Accounts, and any other Financial Accounts of the Account Holder that are treated as Pre-existing Accounts under point (b), as a single Financial Account for purposes of satisfying the standards of knowledge requirements set forth in paragraph A of Section VII, and for purposes of determining the balance or value of any of the Financial Accounts when applying any of the account thresholds;

(iii) with respect to a Financial Account that is subject to AML/KYC Procedures, the Reporting Malta Financial Institution is permitted to satisfy such AML/KYC Procedures for the Financial Account by relying upon the AML/KYC Procedures performed for the Pre-existing Account described in sub-paragraph C(9)(a); and (iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of the EU Administrative Cooperation Directive;

B 4506

(iv) the opening of the Financial Account does not require the provision of new, additional or amended customer information by the Account Holder other than for the purposes of the EU Administrative Cooperation .

10. The term "New Account" means a Financial Account maintained by a Reporting Malta Financial Institution opened on or after 1 January 2016 unless it is treated as a Pre-existing Account under sub-paragraph C(9)(b).

11. The term "Pre-existing Individual Account"" means a Pre-existing Account held by one or more individuals.

12. The term "New Individual Account" means a New Account held by one or more individuals.

13. The term "Pre-existing Entity Account" means a Pre-existing Account held by one or more Entities.

14. The term "Lower Value Account"" means a Pre-existing Individual Account with an aggregate balance or value as of 31 December 2015 that does not exceed an amount denominated in Euro that corresponds to USD 1 000 000.

15. The term "High Value Account" means a Pre-existing Individual Account with an aggregate balance or value that exceeds, as of 31 December 2015, or 31 December of any subsequent year, an amount denominated in Euro that corresponds to USD 1 000 000.

16. The term "New Entity Account" means a New Account held by one or more Entities.

17. The term "Excluded Account" means any of the following accounts:

(a) a retirement or pension account that satisfies the following requirements:

(i) the account is subject to regulation as a personal retirement account or is part of a registered or regulated retirement or pension plan for the provision of retirement or pension benefits (including disability or death benefits);

(ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(iii) information reporting is required to the tax authorities with respect to the account;

(iv) withdrawals are conditioned on reaching a specified retirement age, disability, or death, or penalties apply to withdrawals made before such specified events; and either (i) annual contributions are limited to an amount denominated in Euro that corresponds to USD 50 000 or less; or (ii) there is a maximum lifetime contribution limit to the account of an amount denominated in Euro that corresponds to USD 1 000 000 or less, in each case applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of sub-paragraph C(17)(a)(v) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of sub-paragraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of sub-paragraphs B(5) through (7);

(b) an account that satisfies the following requirements:

(i) the account is subject to regulation as an investment vehicle for purposes other than for retirement and is regularly traded on an established securities market, or the account is subject to regulation as a savings vehicle for purposes other than for retirement;

(ii) the account is tax-favoured (i.e., contributions to the account that would otherwise be subject to tax are deductible or excluded from the gross income of the Account Holder or taxed at a reduced rate, or taxation of investment income from the account is deferred or taxed at a reduced rate);

(iii) withdrawals are conditioned on meeting specific criteria related to the purpose of the investment or savings account (for example, the provision of educational or medical benefits), or penalties apply to withdrawals made before such criteria are met; and

(iv) annual contributions are limited to an amount denominated in Euro that corresponds to USD 50 000 or less, applying the rules set forth in paragraph C of Section VII for account aggregation and currency translation.

A Financial Account that otherwise satisfies the requirement of sub-paragraph C(17)(b)(iv) will not fail to satisfy such requirement solely because such Financial Account may receive assets or funds transferred from one or more Financial Accounts that meet the requirements of sub-paragraph C(17)(a) or (b) or from one or more retirement or pension funds that meet the requirements of any of sub-paragraphs B(5) through (7);

B 4508

(c) a life insurance contract with a coverage period that will end before the insured individual attains age 90, provided that the contract satisfies the following requirements:

(i) periodic premiums, which do not decrease over time, are payable at least annually during the period the contract is in existence or until the insured attains age 90, whichever is shorter;

(ii) the contract has no contract value that any person can access (by withdrawal, loan, or otherwise) without terminating the contract;

(iii) the amount (other than a death benefit) payable upon cancellation or termination of the contract cannot exceed the aggregate premiums paid for the contract, less the sum of mortality, morbidity, and expense charges (whether or not actually imposed) for the period or periods of the contract's existence and any amounts paid prior to the cancellation or termination of the contract; and

(iv) the contract is not held by a transferee for value;

(d) an account that is held solely by an estate if the documentation for such account includes a copy of the deceased's will or death certificate;

(e) an account established in connection with any of the following:

(i) a court order or judgment;

(ii) a sale, exchange, or lease of real or personal property, provided that the account satisfies the following requirements:

- the account is funded solely with a down payment, earnest money, deposit in an amount appropriate to secure an obligation directly related to the transaction, or a similar payment, or is funded with a Financial Asset that is deposited in the account in connection with the sale, exchange, or lease of the property,

- the account is established and used solely to secure the obligation of the purchaser to pay the purchase price for the property, the seller to pay any contingent liability, or the lessor or lessee to pay for any damages relating to the leased property as agreed under the lease,

- the assets of the account, including the income earned thereon, will be paid or otherwise distributed for the benefit of the purchaser, seller, lessor, or lessee (including to satisfy such person's obligation) when the property is sold, exchanged, or

surrendered, or the lease terminates,

- the account is not a margin or similar account established in connection with a sale or exchange of a Financial Asset, and

- the account is not associated with an account described in sub-paragraph C(17)(f);

(iii) an obligation of a Financial Institution servicing a loan secured by real property to set aside a portion of a payment solely to facilitate the payment of taxes or insurance related to the real property at a later time;

(iv) an obligation of a Financial Institution solely to facilitate the payment of taxes at a later time;

(f) a Depository Account that satisfies the following requirements:

(i) the account exists solely because a customer makes a payment in excess of a balance due with respect to a credit card or other revolving credit facility and the overpayment is not immediately returned to the customer; and

(ii) beginning on or before 1 January 2016, the Financial Institution implements policies and procedures either to prevent a customer from making an overpayment in excess of an amount denominated in Euro that corresponds to USD 50 000, or to ensure that any customer overpayment in excess of that amount is refunded to the customer within 60 days, in each case applying the rules set forth in paragraph C of Section VII for currency translation. For this purpose, a customer overpayment does not refer to credit balances to the extent of disputed charges but does include credit balances resulting from merchandise returns;

(g) any other account that presents a low risk of being used to evade tax, has substantially similar characteristics to any of the accounts described in subparagraphs C(17)(a) through (f), and is included in the list of Excluded Accounts referred to in Article 8(7a) of the EU Administrative Cooperation Directive, provided that the status of such account as an Excluded Account does not frustrate the purposes of the EU Administrative Cooperation Directive.

#### D. Reportable Account

1. The term "Reportable Account" means a Financial Account that is maintained by a Reporting Malta Financial Institution and is held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that

B 4510

is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures described in Sections II through VII.

2. The term "Reportable Person" means a Member State Person other than: (i) a corporation the stock of which is regularly traded on one or more established securities markets; (ii) any corporation that is a Related Entity of a corporation described in clause (i); (iii) a Governmental Entity; (iv) an International Organisation; (v) a Central Bank; or (vi) a Financial Institution.

3. The term "Member State Person" with regard to Malta means an individual or Entity that is resident in any other Member State under the tax laws of that other Member State, or an estate of a decedent that was a resident of any other Member State. For this purpose, an Entity such as a partnership, limited liability partnership or similar legal arrangement, which has no residence for tax purposes shall be treated as resident in the jurisdiction in which its place of effective management is situated.

4. The term "Participating Jurisdiction" with regard to Malta means:

(a) any other Member State;

(b) any other jurisdiction (i) with which Malta has an arrangement in place pursuant to which that jurisdiction will provide the information specified in Section I; and (ii) which is identified in a list published by Malta and notified to the European Commission;

(c) any other jurisdiction (i) with which the Union has an agreement in place pursuant to which that jurisdiction will provide the information specified in Section I; and (ii) which is identified in a list published by the European Commission.

5. The term "Controlling Persons" means the natural persons who exercise control over an Entity. In the case of a trust, that term means the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust, and in the case of a legal arrangement other than a trust, such term means persons in equivalent or similar positions. The term "Controlling Persons" must be interpreted in a manner consistent with the 2012 Financial Action Task Force Recommendations.

6. The term "NFE" means any Entity that is not a Financial Institution.

7. The term "Passive NFE" means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.

8. The term "Active NFE" means any NFE that meets any of the following criteria:

- (a) less than 50% of the NFE's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50% of the assets held by the NFE during the preceding calendar year or other appropriate reporting period are assets that produce or are held for the production of passive income;
- (b) the stock of the NFE is regularly traded on an established securities market or the NFE is a Related Entity of an Entity the stock of which is regularly traded on an established securities market;
- (c) the NFE is a Governmental Entity, an International Organisation, a Central Bank, or an Entity wholly owned by one or more of the foregoing;
- (d) substantially all of the activities of the NFE consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity does not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
- (e) the NFE is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a business other than that of a Financial Institution, provided that the NFE does not qualify for this exception after the date that is 24 months after the date of the initial organisation of the NFE;
- (f) the NFE was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganising with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- (g) the NFE primarily engages in financing and hedging transactions with, or for, Related Entities that are not Financial Institutions, and does not provide financing or hedging services to any Entity that is not a Related Entity, provided that the group of any such Related Entities is primarily engaged in a business other than that of a Financial Institution; or
- (h) the NFE meets all of the following requirements:
  - (i) it is established and operated in its Member State or other jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its Member State or other jurisdiction of residence and it

B 4512

is a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;

(ii) it is exempt from income tax in its Member State or other jurisdiction of residence;

(iii) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;

(iv) the applicable laws of the NFE's Member State or other jurisdiction of residence or the NFE's formation documents do not permit any income or assets of the NFE to be distributed to, or applied for the benefit of, a private person or non-charitable Entity other than pursuant to the conduct of the NFE's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the NFE has purchased; and

(v) the applicable laws of the NFE's Member State or other jurisdiction of residence or the NFE's formation documents require that, upon the NFE's liquidation or dissolution, all of its assets be distributed to a Governmental Entity or other non-profit organisation, or escheat to the government of the NFE's Member State or other jurisdiction of residence or any political subdivision thereof.

#### E. Miscellaneous

1. The term "Account Holder" means the person listed or identified as the holder of a Financial Account by the Financial Institution that maintains the account. A person, other than a Financial Institution, holding a Financial Account for the benefit or account of another person as agent, custodian, nominee, signatory, investment advisor, or intermediary, is not treated as holding the account for purposes of the EU Administrative Cooperation Directive, and such other person is treated as holding the account. In the case of a Cash Value Insurance Contract or an Annuity Contract, the Account Holder is any person entitled to access the Cash Value or change the beneficiary of the contract. If no person can access the Cash Value or change the beneficiary, the Account Holder is any person named as the owner in the contract and any person with a vested entitlement to payment under the terms of the contract. Upon the maturity of a Cash Value Insurance Contract or an Annuity Contract, each person entitled to receive a payment under the contract is treated as an Account Holder.

2. The term "AML/KYC Procedures" means the customer due diligence procedures of a Reporting Financial Institution pursuant to the anti-money laundering or similar requirements to which such Reporting Malta Financial

Institution is subject.

3. The term "Entity" means a legal person or a legal arrangement, such as a corporation, partnership, trust, or foundation.

4. An Entity is a "Related Entity" of another Entity if (i) either Entity controls the other Entity; (ii) the two Entities are under common control; or (iii) the two Entities are Investment Entities described in sub-paragraph A(6)(b), are under common management, and such management fulfils the due diligence obligations of such Investment Entities. For this purpose control includes direct or indirect ownership of more than 50% of the vote and value in an Entity.

5. The term "TIN" means Taxpayer Identification Number (or functional equivalent in the absence of a Taxpayer Identification Number).

6. The term "Documentary Evidence" includes any of the following:

(a) a certificate of residence issued by an authorised government body (for example, a government or agency thereof, or a municipality) of the Member State or other jurisdiction in which the payee claims to be a resident;

(b) with respect to an individual, any valid identification issued by an authorised government body (for example, a government or agency thereof, or a municipality), that includes the individual's name and is typically used for identification purposes;

(c) with respect to an Entity, any official documentation issued by an authorised government body (for example, a government or agency thereof, or a municipality) that includes the name of the Entity and either the address of its principal office in the Member State or other jurisdiction in which it claims to be a resident or the Member State or other jurisdiction in which the Entity was incorporated or organised;

(d) any audited financial statement, third-party credit report, bankruptcy filing, or securities regulator's report.

With respect to a Pre-existing Entity Account, Reporting Malta Financial Institutions may use as Documentary Evidence any classification in the Reporting Malta Financial Institution's records with respect to the Account Holder that was determined based on a standardised industry coding system, that was recorded by the Reporting Malta Financial Institution consistent with its normal business practices for purposes of AML/KYC Procedures or another regulatory purposes (other than for tax purposes) and that was implemented by the Reporting Malta Financial Institution prior to the date used to classify the Financial Account as a Pre-existing Account, provided that the Reporting Malta Financial Institution does not know or does not have reason to know that such classification is incorrect or unreliable. The term "standardised industry coding system" means a coding system

B 4514

used to classify establishments by business type for purposes other than tax purposes.

## SECTION IX

### EFFECTIVE IMPLEMENTATION

Pursuant to Article 8(3a) of the EU Administrative Cooperation Directive, Member States must have rules and administrative procedures in place to ensure effective implementation of, and compliance with, the reporting and due diligence procedures set out above including:

- (1) rules to prevent any Financial Institutions, persons or intermediaries from adopting practices intended to circumvent the reporting and due diligence procedures;
- (2) rules requiring Reporting Financial Institutions to keep records of the steps undertaken and any evidence relied upon for the performance of the above procedures and adequate measures to obtain those records;
- (3) administrative procedures to verify Reporting Financial Institutions' compliance with the reporting and due diligence procedures; administrative procedures to follow up with a Reporting Financial Institution when undocumented accounts are reported;
- (4) administrative procedures to ensure that the Entities and accounts defined in domestic law as Non-Reporting Malta Financial Institutions and Excluded Accounts continue to have a low risk of being used to evade tax; and
- (5) effective enforcement provisions to address non-compliance.

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### ANNEX II

#### COMPLEMENTARY REPORTING AND DUE DILIGENCE RULES FOR FINANCIAL ACCOUNT INFORMATION

##### 1. Change in circumstances

A "change in circumstances" includes any change that results in the addition of information relevant to a person's status or otherwise conflicts with such person's status. In addition, a change in circumstances includes any change or addition of information to the Account Holder's account (including the addition, substitution, or other change of an Account Holder) or any change or addition of information to any account associated with such account (applying the account

aggregation rules described in sub-paragraphs C(1) through (3) of Section VII of Annex I) if such change or addition of information affects the status of the Account Holder.

If a Reporting Malta Financial Institution has relied on the residence address test described in sub-paragraph B(1) of Section III of Annex I and there is a change in circumstances that causes the Reporting Malta Financial Institution to know or have reason to know that the original Documentary Evidence (or other equivalent documentation) is incorrect or unreliable, the Reporting Malta Financial Institution must, by the later of the last day of the relevant calendar year or other appropriate reporting period, or 90 calendar days following the notice or discovery of such change in circumstances, obtain a self-certification and new Documentary Evidence to establish the residence(s) for tax purposes of the Account Holder. If the Reporting Malta Financial Institution cannot obtain the self-certification and new Documentary Evidence by such date, the Reporting Malta Financial Institution must apply the electronic record search procedure described in sub-paragraphs B(2) through (6) of Section III of Annex I.

## 2. Self-certification for New Entity Accounts

With respect to New Entity Accounts, for the purposes of determining whether a Controlling Person of a Passive NFE is a Reportable Person, a Reporting Malta Financial Institution may only rely on a self-certification from either the Account Holder or the Controlling Person.

## 3. Residence of a Financial Institution

A Financial Institution is "resident" in a Member State if it is subject to the jurisdiction of such Member State (i.e., the Member State is able to enforce reporting by the Financial Institution). In general, where a Financial Institution is resident for tax purposes in a Member State, it is subject to the jurisdiction of such Member State and it is, thus, a Member State Financial Institution. In the case of a trust that is a Financial Institution (irrespective of whether it is resident for tax purposes in a Member State), the trust is considered to be subject to the jurisdiction of a Member State if one or more of its trustees are resident in such Member State except if the trust reports all the information required to be reported pursuant to the EU Administrative Cooperation Directive with respect to Reportable Accounts maintained by the trust to another Member State because it is resident for tax purposes in such other Member State. However, where a Financial Institution (other than a trust) does not have a residence for tax purposes (e.g., because it is treated as fiscally transparent, or it is located in a jurisdiction that does not have an income tax), it is considered to be subject to the jurisdiction of a Member State and it is, thus, a Member State Financial Institution if:

- (a) it is incorporated under the laws of the Member State;
- (b) it has its place of management (including effective management)

B 4516

in the Member State; or

- (c) it is subject to financial supervision in the Member State.

Where a Financial Institution (other than a trust) is resident in two or more Member States, such Financial Institution will be subject to the reporting and due diligence obligations of the Member State in which it maintains the Financial Account(s).

4. Account maintained.

In general, an account would be considered to be maintained by a Financial Institution as follows:

- (a) in the case of a Custodial Account, by the Financial Institution that holds custody over the assets in the account (including a Financial Institution that holds assets in street name for an Account Holder in such institution);
- (b) in the case of a Depository Account, by the Financial Institution that is obligated to make payments with respect to the account (excluding an agent of a Financial Institution regardless of whether such agent is a Financial Institution);
- (c) in the case of any equity or debt interest in a Financial Institution that constitutes a Financial Account, by such Financial Institution;
- (d) in the case of a Cash Value Insurance Contract or an Annuity Contract, by the Financial Institution that is obligated to make payments with respect to the contract.

5. Trusts that are Passive NFEs

An Entity such as a partnership, limited liability partnership or similar legal arrangement that has no residence for tax purposes, according to subparagraph D(3) of Section VIII of Annex I, shall be treated as resident in the jurisdiction in which its place of effective management is situated. For these purposes, a legal person or a legal arrangement is considered "similar" to a partnership and a limited liability partnership where it is not treated as a taxable unit in a Member State under the tax laws of such Member State. However, in order to avoid duplicate reporting (given the wide scope of the term "Controlling Persons" in the case of trusts), a trust that is a Passive NFE may not be considered a similar legal arrangement.

6. Address of Entity's principal office

One of the requirements described in sub-paragraph E(6)(c) of Section VIII of Annex I is that, with respect to an Entity, the official documentation includes

either the address of the Entity's principal office in the Member State or other jurisdiction in which it claims to be a resident or the Member State or other jurisdiction in which the Entity was incorporated or organised. The address of the Entity's principal office is generally the place in which its place of effective management is situated. The address of a Financial Institution with which the Entity maintains an account, a post office box, or an address used solely for mailing purposes is not the address of the Entity's principal office unless such address is the only address used by the Entity and appears as the Entity's registered address in the Entity's organisational documents. Further, an address that is provided subject to instructions to hold all mail to that address is not the address of the Entity's principal office.".

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